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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 GERARDO MARTINEZ VELA,
12 Petitioner,
13 v.
14 WARDEN W.Z. JENKINS, DIRECTOR C.
15 PETERS,
16 Respondent.
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Case No. 2:23-cv-01602-SPG-BFM

**ORDER ACCEPTING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION**

18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition in this case (ECF
19 No. 1), and all relevant pleadings and other documents filed and lodged in this action,
20 including the Report and Recommendation of United States Magistrate Judge (ECF No. 16
21 ("Report")), and Respondent's Objection to the Report (ECF No. 17 ("Objection")).
22 Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), the Court has conducted a
23 de novo review of the matters to which objections have been stated. Respondent's
24 assertions and arguments have been reviewed carefully. The Court, however, concludes
25 that nothing set forth in the Objection or otherwise in the record for this case affects or
26 alters, or calls into question, the findings and analysis set forth in the Report.

27 Respondent's Objection argues that Petitioner is subject to a final order of removal
28 and attaches the order of an immigration judge. ECF No. 17 at 4; ECF No. 17-1 at 4-5.

1 However, whether a removal order is final depends on whether the individual appealed the
2 order of removal to the Board of Immigration Appeals and, what relief, if any, was obtained
3 on appeal. *See Nasrallah v. Barr*, 140 S. Ct. 1683, 1691 (2020) (citing 8 U.S.C.A. §
4 1101(a)(47)(A) (a removal order is “final upon the earlier of . . . (i) a determination by the
5 Board of Immigration Appeals affirming such order; or (ii) the expiration of the period in
6 which the alien is permitted to seek review of such order by the Board of Immigration
7 Appeals”)); *see also Abdisalan v. Holder*, 774 F.3d 517, 522-27 (9th Cir. 2014), as
8 amended (Jan. 6, 2015) (detailing when an order of removal may be deemed final). While
9 respondent here attaches the order of an immigration judge, Respondent has not provided
10 evidence to establish whether Petitioner appealed the immigration judge’s order of removal
11 to the Board of Immigration Appeals, and, if so, what the result of that appeal was.
12 Therefore, Respondent still has not shown that Petitioner is subject to a final order of
13 removal.

14 Having completed its review, the Court accepts the findings and recommendations
15 set forth in the Report. Accordingly, the Petition is dismissed without prejudice as
16 unexhausted.

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18 **IT IS SO ORDERED.**

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20 DATED: October 24, 2023

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22 HON. SHERILYN PEACE GARNETT
23 UNITED STATES DISTRICT JUDGE
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